

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA**

ROBERT FARRELL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. CIV-22-0978-HE
	)	
OFFICER BREIDENSTEIN, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Robert Farrell, a state prisoner appearing *pro se* and *in forma pauperis*, filed this § 1983 complaint against CoreCivic, the entity which owns and operates the Davis Correctional Facility, and several of its employees. He purports to state § 1983 claims for violation of his 8<sup>th</sup> and 14<sup>th</sup> Amendment rights. All claims against the employee defendants are asserted in their “official” capacities.

Pursuant to 28 U.S.C. § 636(b)(1)(B) and (C), the matter was referred to Magistrate Judge Shon T. Erwin for initial proceedings. Judge Erwin has conducted an initial review of the complaint and issued a Report and Recommendation recommending that all of plaintiff’s claims be dismissed. The Report concludes that no basis for liability has been alleged as to CoreCivic under the applicable § 1983 standards and that the “official capacity” claims against individual employees should be dismissed as there is no such capacity for an employee of a private entity. Plaintiff has objected to the Report, noting that he previously filed a motion to amend to name the defendants in their individual

capacities and that he hopes to be able to determine a basis for CoreCivic liability in discovery.

Plaintiff's response does not challenge the conclusion that no basis is presently stated for liability against CoreCivic and acknowledges that he should pursue the other defendants individually rather than in any "official" capacity. The Report [Doc. # 15] is therefore **ADOPTED** and plaintiff's claims are **DISMISSED**. The purported "official capacity" claims are dismissed with prejudice; those against CoreCivic are **DISMISSED** without prejudice. Plaintiff's motion to amend [Doc. #18] is **GRANTED**. Plaintiff is granted leave to file an amended complaint within twenty-one (21) days of the date of this order remedying the deficiencies stated in the Report if he can do so, stating any claims he may have against CoreCivic or the individual defendants.

Upon the filing of an amended complaint, the case is re-referred to Judge Erwin for further consideration.

**IT IS SO ORDERED.**

Dated this 27<sup>th</sup> day of February, 2023.

  
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JOE HEATON  
UNITED STATES DISTRICT JUDGE